

the company had planned and whether the company had obtained requisite regulatory approvals and interconnection authority to proceed with its planned activities and actually make use of the rights-of-way. As of the date of this Affidavit, Chibardun has never provided this requested information.

14. Despite not having received the information requested in my May 23, 1997 letter, the City drafted a proposed license agreement which was sent to Chibardun's attorneys in "draft" form on June 6, 1997. In providing this proposed license agreement, it was the City's intent that the parties would negotiate the specific terms and reach mutual agreement on the content of the agreement before the document would be signed. The proposed license agreement sent to Chibardun on June 6, 1997 was a draft document subject to negotiation. It was not provided as a final document for Chibardun to sign. The City was willing to discuss concerns Chibardun may have had to the proposed license agreement terms.

15. With respect to certain provisions of the proposed License Agreement, the Section 9 provision requiring the filing of construction plans and lists of independent contractors was incorporated as a means through which the City and the City superintendent of streets could fulfill their rights-of-way coordination, planning and management duties. With respect to the Section 14 reimbursement provision, it was the City's intent that any amounts thereby paid to the City would be credited against occupancy fees, if any, imposed under a future rights-of-way ordinance.

16. Mr. Vergin sent to me a letter dated June 9, 1997, announcing that Chibardun was canceling its plans to provide cable television and telephone service to the citizens of Rice Lake, and that it would file a "Preemption Petition" with the Federal Communications Commission. Attached hereto as Exhibit 3 is a true and correct copy of the June 9, 1997 letter I received from Mr. Vergin.

17. Based on Mr. Vergin's June 9, 1997 letter, the City believed that Chibardun was canceling its plans to begin construction during 1997, and was thereby withdrawing its permit applications.

18. On June 23, 1997, on behalf of the City, I wrote to Chibardun expressing the City's dismay at Chibardun's cancellation of its plans without discussing the proposed license agreement. Understanding Chibardun's desire to begin construction immediately, I informed Chibardun that it could sign the license agreement under protest, subject to any later determination as to the City's authority to seek such an agreement. As of the date of this Affidavit, Chibardun has never responded to this June 23, 1997 letter.

19. Pursuant to Ordinance No. 849, which the Rice Lake Common Council adopted on August 26, 1997, I have been directed to develop a comprehensive rights-of-way ordinance for the City. With the assistance of counsel and other City personnel, I am currently in the process of developing this ordinance. On August 13, 1997, I left a telephone message with Chibardun's General Manager, Mr. Rick Vergin, informing him that the City will be sending Chibardun a draft of this right-of-way ordinance for comments once it has been prepared.

20. On October 27, 1997, Marcus Cable submitted 38 excavation permit applications to the City indicating that the company would be undertaking a cable

construction project valued at more than \$50,000. In response to Marcus Cable's permit applications, the City applied Ordinance No. 849 and brought Marcus Cable's permit requests before the Rice Lake Common Council on November 11, 1997. The Common Council voted to grant the permit applications, subject to Marcus Cable negotiating a permit agreement with the City. The City has proposed a permit agreement for Marcus Cable to consider the terms of this proposed agreement and was substantially identical to the License Agreement the City proposed to Chibardun. Differences between the two documents exist because of the need to account for terms of Marcus Cable's cable franchise with the City. Marcus Cable's agreement is characterized as a "permit agreement" rather than a "license agreement" because Marcus Cable already has a license to utilize rights-of-way under the terms of Marcus Cable's franchise agreement with the City.

21. Attached hereto as Exhibit 4 is a true and correct copy of the permit agreement that the City proposed to Marcus Cable for purposes of granting the requested 38 excavation permits, and a true and correct copy of the cover letter sent with that proposed agreement.

22. The City has, and will continue to, apply Ordinance No. 849, as well as any rights-of-way ordinance adopted in the future, to all projects or activities that fall within the scope of the provisions of such ordinances, regardless of what entity is seeking approval under and/or implementation of such ordinances.

23. Since at least May 20, 1997, no other entity (including GTE North, Inc.) other than Marcus Cable and Chibardun has filed any permit applications for authority to conduct excavation or construction activity that would be covered by Ordinance No. 849.

24. Attached hereto as Exhibit 5 is a true and correct copy of a May 13, 1997 letter sent to me by representatives of Marcus Cable.

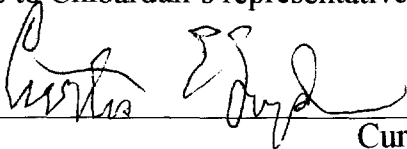
25. Attached hereto as Exhibit 6 is a true and correct copy of a July 8, 1997 letter in which Marcus Cable requested that the City begin franchise renewal negotiations.

26. Attached hereto as Exhibit 7 is a true and correct copy of a September 15, 1997 letter in which Chibardun asked to be involved in the renewal of Marcus Cable's franchise.

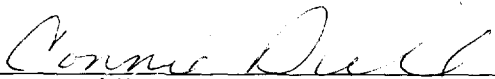
27. Attached hereto as Exhibit 8 is a true and correct copy of a September 23, 1997 letter responding to Chibardun's request to be involved in the Marcus Cable negotiations.

28. Attached hereto as Exhibit 9 is a true and correct copy of a May 21, 1997, letter from Chibardun requesting to be put on the Common Council's agenda for May 27, 1997.

29. Attached hereto as Exhibit 10 is a true and correct copy of a June 23, 1997 letter that I wrote to Chibardun's representative.


Curtis Snyder

Subscribed and sworn to before me
this 26 day of November, 1997.


Notary Public, Barron County, Wisconsin
My commission: _____

CONNIE DIEHL
Notary Public

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Commission Expires March 5, 2000

EXHIBIT 1

CABLE TV ORDINANCE # 647

CITY OF RICE LAKE, WISCONSIN

City of Rice Lake
Cable TV Ordinance

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I

GRANT OF FRANCHISE

A. Franchisee, WFRV Television, Inc., d/b/a Rice Lake Television, is hereby granted for itself and its successors and assigns, subject to the terms and conditions of this franchise ordinance, the right, privilege and authority to construct, operate, maintain and reconstruct a cable communications system within the streets, alleys and public ways of the City. Franchisee shall provide a uniform City-wide cable communications system to the residents and institutions of the City in accordance with this franchise ordinance. Construction and maintenance of the transmission and distribution system, including house connections, shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters and such applicable ordinances and regulations of the City of Rice Lake affecting electrical installations which may be presently in effect or may reasonably be enacted by the City Council of the City of Rice Lake.

B. The franchise is subject to all Rice Lake ordinance provisions now in effect or hereafter lawfully made effective; provided, however, such provisions shall not interfere nor conflict with the rights and obligations of the Grantee.

Nothing in this shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees

to be paid, or manner of construction.

C. For the purpose of operating and maintaining a cable communications system in the City, Franchisee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, or upon, across and along the conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the cable communications system in conformance with the City's specifications. Prior to any construction or alteration, however, Franchisee shall file plans with the appropriate City agencies and utility companies and receive written approval before proceeding, such approval shall not be unreasonably withheld. Whenever the Grantee shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley or other public place, the same shall be replaced and the surface restored in as good condition as before entry within forty-eight (48) hours after completion of the Grantee's work. Upon failure of the Grantee to make such restoration within such time, if the restoration cannot be made within such time, or upon the Grantee's delay of more than twenty-four (24) hours in the continuation of a restoration begun, the City may serve upon the Grantee notice of the City's intent to cause the restoration to be made and unless the Grantee within twenty-four (24) hours after receipt of such notice begins or resumes the proper restoration to be made or demonstrates to

the satisfaction of the City that such delay is due to reasons beyond Grantee's control, including the removal of excess dirt, and the reasonable expense of same shall be paid by the Grantee upon demand by the City.

II

RIGHT OF CITY TO ISSUE FRANCHISE

Franchisee acknowledges and accepts the legal right of the City to issue this franchise on the date of grant thereof and Franchisee agrees that it shall not now nor at any time hereafter challenge the City's legal right to issue this Franchise in any way, in any City, State or Federal Court or governmental agency.

III

EFFECTIVE DATE OF FRANCHISE;

EFFECT UPON EXISTING FRANCHISE

The effective date of the franchise shall be the date of acceptance of the franchise by Franchisee.

IV

TERM

The term of the franchise shall be for a period of fifteen (15) years from the date of acceptance, unless sooner terminated as hereinafter provided, at which time, subject to federal and state law, it shall expire and be of no further force and effect.

V

FRANCHISE NONEXCLUSIVE

Consistent with the requirements of the Cable Communications

Policy Act of 1984, this franchise shall not be construed as any limitation upon the right of the City to grant to other persons rights, privileges or authorities similar to the rights, privileges and authorities herein set forth, in the same or other streets, alleys or other public ways or public places. The City specifically reserves the right to grant at any time during the term of this Ordinance or renewal thereof, if any such additional franchises for a cable communications system as it deems appropriate. Notwithstanding anything to the contrary, in the event that City should enter into a franchise ordinance, permit, license, authorization or other agreement of any kind with any other person or entity other than Grantee for the purpose of constructing or operating a cable system or providing cable service to any part of the City which contains terms more favorable to such person or entity in any regard than similar provisions of this document then this document shall be deemed amended as of the effective date of the other Ordinance, permit, license or other authorization so as to give Grantee the benefit of any such more favorable terms.

VI

FAMILIARITY WITH ORDINANCE

Grantee acknowledges and warrants by acceptance of the rights, privileges and franchise granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise Ordinance and is willing to and does accept all

reasonable risks of the meaning of the provisions, terms and conditions herein. Franchisee acknowledges and states that it has fully studied and considered the requirements relating to a rebuilding of the cable communications system, and all other requirements and provisions of the Franchise Ordinance, and finds that the same are, at the time of the grant of this franchise, commercially practicable and consistent with all existing statutory requirements.

VII

DEFINITIONS

The following additional terms, phrases, words and their derivations shall be defined as follows:

"Basic service" means that level of service regularly provided to all subscribers including the retransmission of local broadcast television signals and the public access channel required herein.

"Cable Mile" shall mean a mile of cable bearing strand.

"Channel" shall mean that portion of the electromagnetic spectrum, typically, but not necessarily, six (6) MHz in bandwidth which is capable of carrying one full resolution standard television signal, or some combination of audio-visual or other nonvideo signals of equivalent bandwidth.

"City" is the City of Rice Lake, a municipal corporation in the State of Wisconsin.

"Downstream" shall mean signals originating at the headend or

hubs and transmitted to subscribers.

"Force majeure" shall mean any delays caused by reason of (1) civil commotion; (2) riots; (3) Act of God, such as floods, earthquakes and hurricanes; and (4) any cause beyond the Grantee's reasonable control; and (5) emergency conditions including weather conditions incompatible with good quality workmanship or operations.

"Grantee" means the person, corporation or other legal entity to whom the Franchise is granted, its agents, employees, lawful successors, transferees or assignees.

"Gross revenues" means the annual gross revenues of Grantee, from all sources of operation of the system in the City of Rice Lake including but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, enhanced telecommunications services, studio rental, production equipment and advertising revenues. The term does not include any taxes on services furnished by Grantee and imposed directly upon any subscriber or used by the State, City or other governmental unit and collected by Grantee on behalf of said governmental unit or bad debts.

"Headend" shall mean the facility, including antennas and associated electronics which receives, controls and switches the electronic information transmitted over the cable communications system.

"School" shall mean any duly accredited nonprofit educational institution, including primary and secondary schools, colleges and universities, both public and private.

"Street" means the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by village, which shall, within its proper use and meaning in the sole opinion of City, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a system.

"Upstream" shall mean the transmission of signals through a cable communications system from subscribers to the headend.

"Wire tapping" shall mean the unauthorized reception of a communications signal.

VIII

SERVICE AREA

A. Franchisee shall offer full cable television service to all areas of the City; provided, however, in those areas with a density less than forty (40) homes per Cable Mile, as measured from the nearest point of existing useable cable trunk, Franchisee reserves the right to impose a one-time installation fee equal to time and materials.

B. Any occupant in the extended area who did not participate in the initial one-time installation fee based upon time and materials and who wishes to subscribe to cable service within the first three (3) years after service is commenced to the extended area shall deposit into an escrow account to be maintained by City the amount of the one-time installation fee. All such new contributions shall be held in escrow until the end of the third year after service is commenced in the extended area, at which time all funds in the escrow shall be divided equally and returned to the then current subscribers. At the end of the third year following the commencement of service to the extended area, all subsequent subscribers in the extended area shall be charged the same installation charge as other subscribers.

C. No person shall be refused service arbitrarily. However, for unusual circumstances, such as requirements for underground cable or where there is more than one hundred and fifty (150) feet of distance from distribution cable to connect of service to subscribers, in order that existing subscribers shall not be unfairly burdened, service may be made available on the basis of a contribution in aid of construction including cost of material, labor and easements.

VIX

INITIAL SYSTEM DESIGN AND CAPACITY

A. Present system. The parties understand and agree that the cable communications system in Rice Lake operated by

Franchisee at the time of this franchise grant consists of a residential network (with a capacity of 210 MHz and a trunk and distribution (tree) design).

B. Public Educational and Governmental Access. Franchisee shall provide, at no cost to the users, at least one PEG access channel on the VHF spectrum, the programming for which shall be controlled by the City. Franchisee shall continue to provide and maintain the existing return line from the Rice Lake Middle School.

C. Technical Standards. The initial cable communications system described in this part and operated hereunder shall at all times operate, at a minimum, in conformance with the technical specifications contained in FCC rules or any recommendations which may supersede such rules. Regardless of the technical standards that may be applicable, the system shall be capable of providing to subscribers video and aural signals of consistently good quality.

X

REBUILDING OF SYSTEMS; SYSTEM DESIGN AND CAPACITY

The following requirements shall govern and be applicable to the rebuilding of the cable communications system by Franchisee:

A. Frequency Availability. Franchisee shall use its best efforts to assure the availability of appropriate frequencies to be used on the cable communications system. Franchisee shall, at all times during the term of the franchise, comply with all rules

and regulations promulgated by the Federal Communications Commission regarding frequency usage and cable television system requirements.

B. Technical Standards. The rebuilt cable communications system installed and operated hereunder shall, at a minimum, conform to the technical guidelines contained in FCC rules or any recommendations which may supersede such rules. Regardless of the technical standards that may be applicable, the system shall be capable of providing to subscribers video and aural signals of consistently good quality and the quality and reliability of voice and data transmission shall be reasonably comparable to that offered over other similar transmission mediums.

XI

CONSTRUCTION

Franchisee shall notify the City in writing of the commencement of any rebuild of the system and completion thereof.

A. Right of Inspection. City shall, at its own expense, have the right to inspect all construction and installation work performed subject to the provisions of this Franchise and shall make such tests as it shall find necessary to ensure compliance with the terms of this Agreement and other pertinent provisions of the law; provided, however, that such inspection and tests shall not interfere with the provision of subscriber services. Any delays in construction due to said inspections shall not be reason for default.

B. Detailed Plan. The Franchisee shall provide to the City for review and comment a detailed construction plan indicating schedule, area construction maps, test plan and projected dates for offering upgraded service. Franchisee shall update this information on a quarterly basis, by the tenth (10th) of each subsequent quarter for the duration of the construction period, showing specifically whether schedules are being met and the reasons for any delay. Franchisee shall adhere to the construction schedule as submitted unless changes have been approved by the City or such delay is due to a Force majeure.

XII

COMMUNITY ACCESS

Access Rules. All rules and regulations as may be necessary or desirable relating to the availability of production equipment for use by the public, studio availability and hours of studio availability, and channel availability and programming time shall be promulgated by the City; provided, however, that any such rules and regulations so promulgated shall not be inconsistent with this Franchise or impose additional burdens on Grantee.

XIII

GENERAL PROVISIONS

The following provisions shall be applicable to the existing cable communications system and to the rebuilt system as contemplated herein upon the effective date of this Franchise Agreement and shall be applicable throughout the life of the

Franchise.

A. Emergency Alert Capabilities. Franchisee shall provide the system with capability to transmit emergency alert signals to all subscribers. Franchisee shall provide emergency audio override capability to permit the City to interrupt and cablecast an audio message on all channels simultaneously in the event of disaster or public emergency, and, upon the rebuild as herein provided, provide audio override so as to permit the cablecasting of an audio message on all channels. City shall indemnify and hold harmless Franchisee during the term of this Franchise for the use of the emergency override system described above.

B. Parental Control Devices. Franchisee shall provide subscribers the ability to lock out such channels as they may desire in accordance with the Cable Communications Policy Act of 1984.

C. Service to Multiple Family Dwelling Units. Franchisee shall offer the individual units of a multiple family dwelling unit, as that term is defined by appropriate City ordinance, all services offered to other dwelling units in the City; provided, however, that any such offering is conditioned upon the unit being passed by activated cable and Franchisee having legal access to said unit.

D. Minimum Interference. All transmission lines, equipment and structures shall be installed and located so as to cause minimum interference with the rights and reasonable convenience

of property owners and at all times kept and maintained in a safe and adequate condition and in good order and repair. Franchisee shall, at all times, employ necessary and reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public.

E. Test and Compliance Procedures.

(1) Franchisee shall perform all tests necessary to determine compliance with the prescribed technical standards.

(a) Certifications and recertifications. Franchisee shall provide an initial proof of performance test for each section of the rebuilt cable system to confirm the extent to which that section of the cable system complies with the applicable technical standards.

(b) Franchisee shall annually conduct the FCC proof of performance test and file with City a copy of test results.

(c) Written records of test results shall be maintained and shall be available for City inspection upon request.

(2) Notice of shutdown. At least twelve (12) hours before any planned shutdown, Franchisee shall give notice when possible, of maintenance or major equipment changeouts which

require loss of service to five (5) or more customers.

(3) Free service calls. Franchisee shall not charge for any service call, whether the call is system-related or subscriber-equipment-related; provided, however, a charge may be made if the service call is the result of damage of the System equipment by the subscriber or the service call is the result of subscriber equipment.

(4) Employee identification. Franchisee shall use its best efforts to clearly identify all personnel, vehicles and other major equipment that are operating under the authority of Franchisee.

F. Converters. With the existing cable communications system and upon the rebuild thereof as contemplated herein, Franchisee shall utilize converters. Furthermore, Franchisee shall, to the extent feasible, construct the system and install equipment which permits the full utilization of cable-ready television receivers by subscribers to avoid converter usage, where possible.

Franchisee shall permit subscribers, where technically feasible and without impairing system security, to purchase compatible converters of their own and use them for cable reception without the payment of any converter charge or security fee to Franchisee provided; however, nothing herein shall permit a subscriber to obtain services over the cable communications system without proper authorization from Franchisee and the payment of appropriate monthly fees therefor; provided, however,

Grantee shall not be responsible, in any form or manner, for repairs, maintenance or installation of a converter purchased by the subscriber or for degraded signal quality due to a converter so purchased.

G. Franchisee shall provide upon request a free drop to all government buildings and schools which are passed by the cable plant.

XIV

SUBSCRIBER RIGHTS AND COMPLAINTS

A. At the time an installation or service agreement is to be signed, Franchisee shall furnish to each subscriber a written statement that clearly sets forth the following:

(1) A complete schedule of rates, fees, charges and terms and conditions of service currently applicable to the type of installation and service ordered;

(2) A complete statement of the subscriber's right to privacy in conformance with 47 U.S.C. 631;

(3) Information concerning the procedures for making inquiries or complaints;

(4) The address and telephone number of the Franchisee's office responsible for handling complaints; and

(5) The address and telephone number of the City office responsible for administration of the Franchise.

B. Franchisee shall furnish the above subscriber information, or any changes thereto, to the City in advance of distri-

buting it to subscribers. The City shall have the right to review said information and direct changes thereto as may be necessary to ensure compliance with this Franchise.

XV

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Franchisee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age or marital status.

XVI

FRANCHISE RENEWAL

This Franchise may be renewed by the City in accordance with applicable Federal, state and local laws.

XVII

POLICE POWERS

In accepting this Franchise, Franchisee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power. Any conflict between the provisions of this Franchise Ordinance and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter.

XVIII

FRANCHISE FEE AND FINANCIAL REPORTING

A. Annual Franchise Payment. Grantee acknowledges that City has the option, under existing federal and state law, to impose a franchise fee of up to and including five percent (5%) of annual gross revenues. Subject to state and federal law, franchisee shall pay to the City five percent (5%) of its annual gross revenues, so long as City may lawfully impose a franchise fee, during the period of its operation under the Franchise commencing with revenues received by Grantee after January 1, 1987. Payments due under this provision shall be computed semi-annually. Payments shall be due and payable for each half of the year sixty (60) days after the close of that half of a year.

B. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise fee or for the performance of any other obligation of Franchisee.

C. Franchisee shall pay a grant fee, not to exceed Eight Thousand Dollars (\$8,000.00), to the City which reflects the refranchising cost to the City. Franchisee shall exercise no rights under this Franchise Agreement until such payment is made.

D. No later than February 15 of the year following for which a franchise fee is paid, Franchisee shall present to the City a statement of gross revenues from all sources.

E. Upon a showing of cause, City may retain an independent certified public accountant, at City's expense, to conduct an

audit of Franchisee's books and records for the purpose of verifying the franchisee fee paid to City. Such audit shall be limited to those books and records necessary for verifying the accuracy of the franchise fee and the accountant shall disclose only that information necessary to inform the City of the accuracy of the payment.

XIX

REGULATION

A. Regulatory Authority. The City shall exercise appropriate regulatory authority under the provisions of this Franchise Ordinance and applicable law. Regulation may be exercised through any duly designated City office or duly established Board of Commission or other body appointed to advise or support the City in its regulatory responsibilities.

B. Rates and Charges.

(1) Initial Rates. Franchisee's initial rates and charges hereto, shall be applied fairly and uniformly to all subscribers in the City. The parties do hereby state and agree that Franchisee has represented that the rates for Basic Service and charges specified not be increased until December 29, 1986, it being understood that at that time, pursuant to the Cable Communications Policy Act of 1984 and related rules of the FCC, rates may no longer be regulated by the City.

C. Periodic Review. The Rice Lake Cable Commission shall, every 3 years, review the performance of the franchise, its